

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/11/2004

CORAM:

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

W.P.No.10832 of 1996

and

W.P.No.10833 of 1996

1. K.Thinakaran
2. M.Chella Pandian
3. P.Stani Fernando
4. R.Sekaranatham
5. S.Palanichamy
6. K.Karuppanan
7. S.Shanmugasundara Pandian
8. P.Nagaraj
9. T.Paulraj
10. A.Raj Fernando
11. A.Anselm Fernando
12. R.Jesudasan
13. T.Gnanamani
14. J.Elias
15. P.Palanichamy
16. R.Gnanamoorthy
17. B.Sudalai Muthu
18. J.Selvam
19. B.Agilan Machado
20. S.Ganesan
21. R.Santhanaraj
22. S.Jesu
23. S.Govindarajan
24. V.Andi Udaiyar
25. D.Selvaraj
26. C.Kanagaraj
27. S.Paramasivan
28. A.Thalavai
29. M.Periasamy
30. R.Premanantham
31. V.Joseph Antony
32. A.Veerabagumoorthi
33. M.Pitchaiappan
34. R.Mohan
35. Antonyraj
36. M.Ganesan
37. C.Murugan
38. P.Arunachalam

39. V.Manickam
40. A.Xavier Machado
41. G.Mani
42. A.M.S.Antony Selvam
43. M.Alver
44. S.Veerapandia Kattabomman
45. P.Arulanandam Moses
46. E.Velu
47. Babu Bravi Anton Fdo
48. N.Soosaiah Decruz
49. M.Murugan
50. M.Selvaraj .. Petitioners in
W.P.No.10832 of 1996

1. P.Vetrivel
2. S.Subburaj
3. M.Stebinack Vaiz
4. N.P.Nallasivam
5. L.M.J.Rolland
6. S.Gopal
7. S.Sithivinayagam
8. A.M.D.Leenus
9. A.Isaac Ayyadurai
10. M.Antony Xavier
11. E.Pascal Fernando
12. S.Jeyakodi
13. J.Vedamanickam
14. S.Subburaj
15. D.Balaji
16. F.Sahayaraj Fernando
17. M.Perumal Naidu
18. J.Ramajeyam
19. A.Mohamed Ibrahim
20. P.Ramar
21. S.Vidyaharan
22. C.Madasamy
23. E.Sahayam Fernando
24. R.Shanmugavelu
25. A.Mathiyalagan .. Petitioners in
W.P.No.10833 of 1996
-vs-

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. The Management,
Tuticorin Stevedores Association
(Labour Pool) rep. by its Secretary,

84-D, South Raja Street,
Tuticorin-628 001.

3. Tuticorin Port Trust, Tuticorin.

(Third respondent impleaded as per the order
of this Court dated 17.6.2004 in
W.P.M.P.Nos.28462 and 28463 of 2003) .. Respondents in
both the writ petitions

Writ Petitions filed under Article 226 of the Constitution of India,
praying for issuance of writ of certiorarified mandamus, as stated therein.

!For petitioners : Mr.D.Hariparanthaman for
M/s.M.Muthupandian

For respondent No.2 : Mr.S.Subbiah
For respondent No.3 : M/s.R.Dhamodaran,
T.Sathyavathy

:ORDER

The prayer in the writ petitions is for issuance of writ of
certiorarified mandamus, after calling for the concerned records from the file
of the first respondent / Labour Court pertaining to the proceedings in
C.P.No.155 of 1992 (in W.P.No.10832 of 1996) and C.P.No.135 of 1 992 (in
W.P.No.10833 of 1996), quash the order dated 8.12.1994 and consequently direct
the second respondent to pay the amounts as claimed in the Claim Petitions
filed by the petitioners together with interest at the rate of 12% per annum
calculated from the date of claim till the date of payment and award costs.

2. The petitioners herein were working in the second respondent/
Management. A settlement under Section 12(3) of the Industrial Disputes Act
was reached before the Assistant Labour Commissioner (Central) on 8.6.1983
between the second respondent/Management and various Trade Unions representing
the employees, including the Union of the petitioners. The settlement was
related to the introduction of incentive scheme for cargo handling operation
in the Tuticorin Port. As per Clause 15 of the said settlement, incentive
earnings for each workers should be calculated as per the stipulations and
calculations had to be made on the basis of the least basic wages of a shore
worker. Another settlement dated 11.4.1984 was arrived at between the
Government of India represented by Ministry of Shipping and Transport and four
major Trade Union Federations of the Port and Dock Workers, which was
regarding the wage revision of the workers. According to the petitioners, the
wages as fixed by the settlement was also implemented in respect of the
employees of the second respondent also. However, the settlement relating to
incentive earnings was not taken into account, though Clause 23 of the
settlement dated 11.4.1984 provides categorically.

3. One other settlement dated 12.6.1989 was arrived between the
Management and the Unions representing the Port and Dock Workers regarding the

issue of wage revision and liberalisation of terms and conditions of employment. It is stated that the second respondent/Management denied their right accrued under the settlements. The petitioners filed claim petitions before the Labour Court at Madurai under Section 33-C(2) of the Industrial Disputes Act, which was later transferred to Labour Court, Tirunelveli along with other similar claim petition of other Union and re-numbered as C.P.Nos.155 of 1992 and 135 of 1992.

4. The Labour Court tried both the claim petitions together and passed a common order stating that dispute between the workmen and the employer in regard to the interpretation of any provisions of the award or settlement can be resolved only by following the procedure prescribed under Section 36-A of the Industrial Disputes Act by way of reference to the Tribunal.

5. Learned counsel for the petitioners Mr.Hariparanthaman brought to the notice of this Court the judgment of the Supreme Court reported in 1963 (II) L.L.J. 89 (Central Bank of India vs. Rajagopalan), wherein, it is held as follows:

"It is however, urged that in dealing with the question about the existence of a right set up by the workman, the labour court would necessarily have to interpret the award or settlement on which the right is based, and that cannot be within its jurisdiction under S.33C(2), because interpretations of awards or settlements have been specifically and expressly provided for by S.36A. We have already noticed that S.36A has also been added by the Amending Act 36 of 1956 along with S.33C, and the appellant's argument is that the legislature introduced the two sections together and thereby indicated that questions of interpretation fall within S.36A and, therefore, outside S.33C(2). There is no force in this contention. Section 36A merely provides for the interpretation of any provision of an award or settlement where any difficulty or doubt arises as to the said interpretation. Generally, this power is invoked when the employer and his employees are not agreed as to the interpretation of any award or settlement, and the appropriate Government is satisfied that a defect or doubt has arisen in regard to any provision in the award or settlement. Sometimes, cases may arise where the awards or settlements are obscure, ambiguous or otherwise present difficulty in construction. It is in such cases that S.36A can be invoked by the parties by moving the appropriate Government to make the necessary reference under it. Experience showed that where awards or settlements were defective in the manner just indicated, there was no remedy available to the parties to have their doubts or difficulties resolved and that remedy is now provided by S.36A. But the scope of S.36A is different from the scope of S.33C(2), because S.36A is not concerned with the implementation or execution of the award at all, whereas that is the sole purpose of S.33C(2). Whereas S.33C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, S.36A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under S.36A. Besides, there can be no doubt that when the labour court is given the power

to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well-settled that it is open to the executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provisions of the decree. These limitations apply also to the labour court; but like the executing Court, the labour court would also be competent to interpret the award or settlement on which a workman bases his claim under S.33C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under S.33C(2), it would, in appropriate cases, be open to the labour court to interpret the award or settlement on which the workman's right rests. "

6. The abovesaid judgment of the Supreme Court was followed by the Supreme Court in the decision reported in 1995 (1) S.C.C. 235 (Municipal Corporation of Delhi vs. Ganesh Razak), wherein the Supreme Court held as follows:

8. Reference may be made first to the Constitution Bench decision in Central Bank of India Ltd. v. P.S.Rajagopalan (1964 (3) SCR 140 : AIR 1964 SC 743 : 1963 (2) L.L.J. 89) on which Shri Rao placed heavy reliance. That was a case in which the question of maintainability of proceedings under Section 33-C(2) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of Section 33-C(2) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33-C(2) because interpretation of awards or settlements has been expressly provided for by Section 36-A. This objection was rejected. This Court pointed out the difference in the scope of Section 36-A and Section 33-C(2) indicating that the distinction lies in the fact that Section 36-A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33-C(2); and whereas Section 33-C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36-A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under Section 36-A. In this context, this Court also indicated that the power of the Labour Court in a proceeding under Section 33 -C(2) being akin to that of the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2), like the power of the Executing Court to interpret the decree for the purpose of execution. Relevant extract from that decision is as under: (SCR pp. 154-155).

"Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the Executing Court cannot go behind the decree, nor can it add to or subtract

from the provision of the decree. These limitations apply also to the Labour Court; but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests."

This decision itself indicates that the power of the Labour Court under Section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned counsel for the respondents."

7. It is seen from the abovesaid judgments that under Section 33-C(2), the Labour Court is vested with the jurisdiction to interpret the award or the settlement on which the claim is based, but it failed. 8. Hence, the order of the Labour Court dismissing the claim petitions as not maintainable under Section 33-C(2), is set aside. The matters are remanded back to the Labour Court for fresh consideration. The Labour Court is directed to pass orders within a period of three months from the date of receipt of a copy of this order. 9. With the above observations, the writ petitions are disposed of. No costs.

Index : Yes

Internet : Yes

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To

1. The Presiding Officer, Labour Court, Tirunelveli.

2. Tuticorin Port Trust, Tuticorin.

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